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**MAY 10 2004**

**OFFICE OF PETITIONS**

In re Application of  
Andino et al  
Application No. 09/524,990  
Filed: 14 March, 2000  
Attorney Docket No. CL/V-30886A/CGV2116

ON PETITION

This is a decision on the petition filed on 16 April, 2004, to revive the application under 37 C.F.R. §1.137(b).

For the reasons set forth below, the petition is **GRANTED**.

**BACKGROUND**

The record reflects that:

- Petitioner failed to reply timely and properly to the non-final Office action mailed on 16 July, 2003, with a reply due absent a request and fee for extension of time on or before 16 October, 2003;
- a result, the application was deemed abandoned after midnight 16 October, 2003;
- before Notice of Abandonment was mailed, the instant petition (with fee), statement of unintentional delay and a reply in the form of an amendment were filed on 16 April, 2004; and
- Notice of Abandonment was mailed on 20 April, 2004.

### STATUTES, REGULATIONS AND ANALYSIS

Congress has authorized the Commissioner to "revive an application if the delay is shown to the satisfaction of the Commissioner to have been "unintentional." 35 U.S.C. §41(a)(7). The regulations at 37 C.F.R. §1.137(b) set forth the requirements for a petitioner to revive a previously unintentionally abandoned application under this congressional grant of authority. Petitioner must be diligent in attending to the matter.<sup>1</sup> Failure to do so does not constitute the care required under Pratt,<sup>2</sup> and so cannot satisfy the test for diligence and due care.

(By contrast, unintentional delays are those that do not satisfy the very strict statutory and regulatory requirements of unavoidable delay, and also, by definition, are not intentional.<sup>3</sup>))

#### Allegations as to Unintentional Delay

Petitioner has satisfied the regulatory requirements as required under 37 C.F.R. §1.137(b).

### CONCLUSION

Because Petitioner satisfied the burdens set forth under 37 C.F.R. §1.137(b) hereby is **granted**.

The file will be forwarded to Technology Center 1700 for further processing in due course.

Telephone inquiries concerning this decision may be directed to the undersigned at (703) 305-9199.



John J. Gillon, Jr.  
Senior Attorney  
Office of Petitions

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<sup>1</sup> See: Diligence in Filing Petitions to Revive and Petitions to Withdraw the Holding of Abandonment, 1124 Off. Gaz. Pat. Office 33 (March 19, 1991). It was and is Petitioner's burden to exercise diligence in seeking either to have the holding of abandonment withdrawn or the application revived. See 1124 Off. Gaz. Pat. Office supra.

<sup>2</sup> Ex parte Pratt, 1887 Dec. Comm'r Pat. 31 (Comm'r Pat. 1887); see also: Ex parte Henrich, 1913 Dec. Comm'r Pat. 139, 141 (Comm'r. Pat. 1913).

<sup>3</sup> Therefore, by example, an unintentional delay in the reply might occur if the reply and transmittal form are to be prepared for shipment by the US Postal Service, but other pressing matters distract one's attention and the mail is not timely deposited for shipment.